

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NEVADA RESTAURANT SERVICES, INC.,)
dba DOTTY'S,)

Plaintiff,)

vs.)

CLARK COUNTY, a Municipal Corporation,)
and Does I through X,)

Defendants.)

Case No.: 2:16-cv-0238-GMN-NJK

ORDER

Pending before the Court is the Motion for Summary Judgment, (ECF No. 67), filed by Defendant Clark County (the "County"). Plaintiff Nevada Restaurant Services, Inc. ("Plaintiff") filed a Response, (ECF No. 82), and the County filed a Reply, (ECF No. 86).

Also pending before the Court is the Motion for Partial Summary Judgment, (ECF No. 74), filed by Plaintiff. The County filed a Response, (ECF No. 83), and Plaintiff filed a Reply, (ECF No. 88). For the following reasons, the Court **GRANTS** the County's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Partial Summary Judgment.¹

I. BACKGROUND

Plaintiff owns gaming and drinking establishments in Clark County, Nevada, that operate as taverns under "Class A" gaming licenses. (Am. Compl. ¶ 13, ECF No. 60). These Class A licenses "permit[] the operation of a total of fifteen or fewer slot machines *incidental*

¹ Also pending before the Court is the County's Motion in Limine relating to Plaintiff's damages, (ECF No. 81); the County's Motion for Leave to File, (ECF No. 89); Plaintiff's Motion for the District Judge to Reconsider the Magistrate Judge's Order denying the reopening of discovery, (ECF No. 91); and Plaintiff's Motion for Leave to File, (ECF No. 93). Because the Court grants summary judgment as a matter of law for the County on all of Plaintiff's claims, thereby rendering moot the County's concerns over Plaintiff's damages and Plaintiff's request to reopen discovery, the Court **DENIES** these motions, (ECF Nos. 81, 89, 91, and 93), as moot.

1 to the primary business at the establishment wherein the slot machines are to be located.” Clark
2 County Code (the “Code”) § 8.04.040(B)(3) (emphasis added); (*see* Depo. Of Allison Gigante
3 22:21–24:3, Ex. A to Am. Compl., ECF No. 63).

4 Following a proliferation of businesses operating under a Class A license, the Clark
5 County Board of County Commissioners (the “Board”) passed an amendment to its tavern laws
6 (the “2011 Ordinance”) effective April 9, 2011. (Bill No. L-3-1-1 1-3(A)/Ordinance No. L-252-
7 11, Ex. I to County’s Mot. for Summ. J. (“MSJ”), ECF No. 67). The 2011 Ordinance required
8 that taverns operating under Class A limited gaming licenses have a bar and at least eight slot
9 machines “embedded” in the bar. Code § 8.20.020.385 (Apr. 19, 2011). Taverns licensed “at
10 the same location” prior to December 22, 1990, were exempted from the new requirement. *Id.*

11 After some problems with enforcement of the 2011 Ordinance, the Board amended the
12 Code by passing Ordinance L-256-14 (the “2014 Ordinance”) on December 3, 2014. *See* Code
13 § 8.20.020.385. The 2014 Ordinance requires taverns to maintain bars with a minimum height
14 of forty inches and to operate a minimum number of slot machines as “bartop machines.”²
15 Code § 8.20.020.385(c)(1). Alternatively, a tavern may comply if less than fifty-percent of its
16 revenue is derived from slot machines. Code § 8.20.020.385(c)(2). A tavern need not comply
17 with these provisions if it either operates seven or fewer slot machines or qualifies as a
18 grandfathered tavern. Code § 8.20.020.385(d)–(e). According to the Code, a “grandfathered
19 tavern” is:

20 (i) A tavern licensed for fifteen or fewer slot machines, the
21 application for which was pending or approved prior to [December
22 8, 2006]; or

23 (ii) Any tavern which, as of December 2, 2014, operated more than
24 fifty percent of the slot machines on its premises as bartop

25 ² A “bartop machine” is a “slot machine or gaming device which is installed into the flat horizontal counter of a
‘bar’ . . . for which the bar is the cabinetry of the slot machine.” Code § 8.20.020.024.

1 machines, regardless of the height of such bartop machines located
2 in a bar

3 Code § 8.20.020.385(a)(i)–(ii).

4 In January 2015, Director Jacqueline Holloway of the Department of Business License
5 for Clark County (“Director Holloway”) sent Plaintiff letters (the “January Letters”) stating that
6 nineteen of Plaintiff’s tavern locations were grandfathered in under the 2014 Ordinance. (*See*
7 Ex. B-13 to Am. Compl., ECF No. 63). Then in February 2015, Director Holloway sent
8 Plaintiff a letter (the “February Letter”) that confirmed exempted locations that were
9 grandfathered taverns under the terms of the 2014 Ordinance. (*See* Ex. B to Am. Compl.). The
10 February Letter reflected Director Holloway’s interpretation that, like the 2011 Ordinance,
11 exemption under the 2014 Ordinance depended on the date the tavern location first received a
12 gaming license. (*Id.*). Plaintiff complied with retrofitting the taverns that were not considered
13 grandfathered according to the February Letter. (Am. Compl. ¶¶ 47).

14 On October 28, 2015, Plaintiff received an additional letter from Director Holloway (the
15 “October Letter”) (collectively the “letters”) stating that “previous notifications concerning the
16 grandfathered status of [Plaintiff’s] taverns . . . must be revised.” (*See* Ex. B to Am. Compl.).
17 Director Holloway revised her interpretation and concluded that the application date of “current
18 ownership,” rather than tavern location, determined grandfathered status. (*Id.*). Pursuant to
19 this, “the majority of [Plaintiff’s] locations lost their grandfathering status as of the date of
20 [Director] Holloway’s October 28, 2015 letter.” (Pl.’s MSJ 11:12–14).

21 Rather than complying with the 2014 Ordinance, Plaintiff filed the instant case seeking a
22 petition for writ of mandamus and judicial review, and alleging violations of due process and
23 § 1983. (*See generally* Am. Compl.). Additionally, Plaintiff alleges that the County has
24 “arbitrarily and capriciously denied [Plaintiff’s] locations the package liquor licenses it
25 regularly grants other taverns” pursuant to Code § 8.20.020.250. (Am. Compl. 18:7–8).

1 Plaintiff alleges this claim under its petition for writ of mandamus, judicial review, and due
2 process causes of action. (Am. Compl. at 19–25).

3 On February 10, 2016, Plaintiff filed a Motion for Preliminary Injunction, (ECF No. 6),
4 which the Court later denied, (ECF No. 27). The County filed its opposition to Plaintiff’s
5 Motion for Preliminary Injunction and included in its opposition a Motion to Dismiss Plaintiff’s
6 claims related to the 2014 Ordinance. (*See generally* Mot. to Dismiss (“MTD”), ECF No. 14).
7 On March 23, 2017, the Court granted the County’s Motion to Dismiss and granted Plaintiff
8 leave to amend, (ECF No. 58). Plaintiff filed its Amended Complaint, (ECF No. 60), on April
9 13, 2017, and the County filed the instant Motion for Summary Judgment, (ECF No. 67), on
10 May 12, 2017. On May 15, 2017, Plaintiff filed the instant Motion for Partial Summary
11 Judgment, (ECF No. 74).

12 **II. LEGAL STANDARD**

13 The Federal Rules of Civil Procedure provide for summary adjudication when the
14 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
15 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant
16 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that
17 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
18 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable
19 jury to return a verdict for the nonmoving party. *See id.* “Summary judgment is inappropriate if
20 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict
21 in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th
22 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A
23 principal purpose of summary judgment is “to isolate and dispose of factually unsupported
24 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

1 In determining summary judgment, a court applies a burden-shifting analysis. “When
2 the party moving for summary judgment would bear the burden of proof at trial, it must come
3 forward with evidence which would entitle it to a directed verdict if the evidence went
4 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing
5 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*
6 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In
7 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
8 moving party can meet its burden in two ways: (1) by presenting evidence to negate an
9 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
10 party failed to make a showing sufficient to establish an element essential to that party’s case
11 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–
12 24. If the moving party fails to meet its initial burden, summary judgment must be denied and
13 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,
14 398 U.S. 144, 159–60 (1970).

15 If the moving party satisfies its initial burden, the burden then shifts to the opposing
16 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*
17 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
18 the opposing party need not establish a material issue of fact conclusively in its favor. It is
19 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
20 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
21 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
22 summary judgment by relying solely on conclusory allegations that are unsupported by factual
23 data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go
24 beyond the assertions and allegations of the pleadings and set forth specific facts by producing
25 competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

1 At summary judgment, a court’s function is not to weigh the evidence and determine the
2 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.
3 The evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn
4 in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is
5 not significantly probative, summary judgment may be granted. *See id.* at 249–50.

6 **III. DISCUSSION**

7 Plaintiff’s Amended Complaint alleges the following claims: (1) petition for a writ of
8 mandamus; (2) judicial review; (3) violation of procedural due process; (4) violation of
9 substantive due process; (5) violation of § 1983; (6) injunctive relief; and (7) declaratory relief.
10 (*See generally* Am. Compl., ECF No. 60).

11 The County seeks summary judgment on Plaintiff’s claims because the Amended
12 Complaint “contains the same defects identified in the order granting [the County’s] motion to
13 dismiss.” (County’s Mot. for Summ. J. (“MSJ”) 13:12–13). Specifically, the County asserts
14 that the “law of the case, therefore, requires dismissal of the claims for relief predicated upon
15 violations of the Procedural Due Process Clause and the Substantive Due Process Clause of the
16 Fourteenth Amendment,” and “Plaintiff’s petition for mandamus relief, judicial review request,
17 declaratory relief claim and injunctive relief claim are also still procedurally and substantively
18 infirm to warrant continued litigation.” (*Id.* 13:13–17).

19 Conversely, Plaintiff seeks summary judgment on its procedural due process claim, void
20 for vagueness claim, and substantive due process claim. (Pl.’s MSJ 1:24–3:20). Because
21 Plaintiff only seeks summary judgment on its due process claims, the Court will address the
22 County’s Motion for Summary Judgment and then incorporate Plaintiff’s Motion for Partial
23 Summary Judgment in the due process sections.
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1 **A. The County’s Motion for Summary Judgment**

2 Because many of Plaintiff’s claims are predicated on its due process claims, the Court
3 will first address the due process claims and then turn to the remaining the claims.

4 ***1. Due Process***

5 **a. Procedural Due Process**

6 Plaintiff’s Amended Complaint states that the “procedures employed by [the County] in
7 (1) re-interpreting and attempting enforcement of the [2014] Ordinance and (2) denying
8 [Plaintiff] the benefits of Clark County Code § 8.20.020.385(a) have therefore deprived
9 [Plaintiff] of due process of law as guaranteed by the Nevada Constitution and the United
10 States Constitution.”³ (Am. Compl. ¶ 103). Specifically, the thrust of Plaintiff’s procedural due
11 process claim is that the process in which § 8.20.020.385(a) was reinterpreted “failed to provide
12 [Plaintiff] a meaningful opportunity to be heard at a meaningful time,” and Plaintiff alleges that
13 the reinterpretation and enforcement were “fundamentally unfair and violated the due process
14 requirements of the Nevada and United States Constitution.” (Am. Compl. ¶ 107). Plaintiff
15 continues that “[t]he County, through [Director Holloway], has admitted that it ‘reinterpreted’
16 the [2014 Ordinance] without notice or hearing in a way that was extremely detrimental to
17 [Plaintiff].” (Pl.’s MSJ 15:26–28).

18 A claim “based upon procedural due process thus has three elements: (1) a liberty or
19 property interest protected by the Constitution; (2) a deprivation of the interest by the
20 government; (3) lack of process.” *Portman v. Cty. of Santa Clara*, 995 F.2d 898, 904 (9th Cir.
21 1993). Moreover, a protected property interest exists when an individual has a “legitimate
22 claim of entitlement” that derives from “existing rules or understandings.” *Bd. of Regents v.*
23 *Roth*, 408 U.S. 564, 577 (1972); *see Hermosa on Metropole, LLC v. City of Avalon*, 659 F.

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25 ³ Plaintiff pleads its due process claims under both federal and state law. These rights under the Nevada
Constitution are identical to those under federal law. *See McCarran Int’l Airport v. Sisolak*, 137 P.3d 1110, 1119
(Nev. 2006).

1 App’x 409, 410–11 (9th Cir. 2016). “A reasonable expectation of entitlement is determined
2 largely by the language of the statute and the extent to which the entitlement is couched in
3 mandatory terms.” *Wedges/Ledges of California, Inc. v. City of Phoenix, Ariz.*, 24 F.3d 56, 62
4 (9th Cir. 1994); *see also Town of Castle Rock v. Gonzales*, 545 U.S. 748, 760 (2005) (noting
5 that property interests arise only when the relevant state law provisions “truly ma[k]e [the
6 conferral of the benefit] mandatory”).

7 The Code “declare[s] that the right to obtain [a] license is a privilege and . . . the
8 operation of [a] gambling facility . . . is a privileged business subject to regulations.” Code
9 § 8.04.020(A). Further, the Code confers “general power . . . to impose conditions, limitations
10 and restrictions upon a license” and “broad final discretion in all licensing matters” to the
11 Board. Code § 8.04.020(A), (C).

12 In its Motion for Summary Judgment, the County argues that “the Court has held that
13 [Holloway’s] actions undertaken in October 2015 ‘did not act contrarily to the plain language
14 of the 2014 Ordinance’ and was ‘reasonably consistent with its plain language.’” (County’s
15 MSJ 13:18–25 (citing Order at 6, 11, ECF No. 58)). The County continues that the “language
16 of the 2014 Ordinance clearly remains the same as does the evidence supporting the pursuit of
17 the colorable governmental interest.” (*Id.* 13:28–14:2).

18 Plaintiff counters that the County reinterpreted the 2014 Ordinance “without notice or
19 hearing” and that Plaintiff’s “due process rights were violated when the County chose to use
20 this non-process to deprive [Plaintiff] of its own legitimate expectations about its rights.” (Pl.’s
21 MSJ 15:27–28, 16:12–14). Therefore, Plaintiff concludes that “[i]t is undisputed in this case
22 that there was no notice or hearing” and that “[i]t therefore cannot be disputed that there was no
23 process for this Court to even evaluate in order to determine whether the Constitutional
24 standard of due process was met by the County.” (*Id.* 16:25–28).

1 Essentially, Plaintiff’s procedural due process claim relies on Plaintiff’s property rights
2 attached to its gaming license. (*See, e.g.*, Pl.’s MSJ 14:21–15:6 (citing case examples
3 concerning the denial of business licenses and driver’s licenses)). Plaintiff fails to recognize,
4 however, that a gaming license is not a vested property right, unlike other licenses.
5 Specifically, Nevada Revised Statute (“NRS”) § 463.0129(2) states that “[a]ny [gaming]
6 license issued or other commission approval granted pursuant to the provisions of this chapter
7 or chapter 464 of NRS is a revocable privilege, and no holder acquires any vested right therein
8 or thereunder.” Moreover, “the acquisition of a gaming license and use permit constitutes a
9 privilege and not a property right.” *Coury v. Robison*, 976 P.2d 518, 520 (1999). As held in the
10 prior Order, “[alcohol and gambling] are subject to ‘almost limitless’ restriction by the
11 County.” (Order at 8, ECF No. 58); *Nevada Rest. Servs., Inc. v. Clark Cty.*, No. 2:11-cv-00795-
12 KJD, 2012 WL 4355549, at *7 (D. Nev. Sept. 21, 2012), *aff’d*, 638 F. App’x 590 (9th Cir.
13 2016) (dismissing a similar due process claim regarding the 2011 Ordinance). Therefore, the
14 Court finds as a matter of law that Plaintiff cannot demonstrate a protected property interest
15 with its gaming license necessary for a procedural due process claim. The Court thus grants
16 summary judgment in the County’s favor for the procedural due process claim and denies
17 Plaintiff’s Partial Motion for Summary Judgment on this claim.

18 **b. Substantive Due Process**

19 Plaintiff’s Amended Complaint alleges that “there is no reasonable dispute that the
20 County did not have a proper, non-arbitrary basis for its actions in relation to [Plaintiff] in this
21 case.” (Am. Compl. ¶ 121). Plaintiff continues “[w]hile the County may have the ability to
22 legislate and regulate gaming, there is no authority indicating that an administrative employee
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1 can unilaterally change the interpretation or enforcement of a law or regulation passed by the
2 County, as [Director] Holloway testified she did here.” (*Id.* ¶ 114).⁴

3 The constitutional guarantee of substantive due process prevents the government from
4 engaging in conduct that “shocks the conscience” or interferes with rights “implicit in the
5 concept of ordered liberty.” *United States v. Salerno*, 481 U.S. 739, 742 (1987). Substantive
6 due process provides no basis for overturning validly enacted laws unless they are “clearly
7 arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or
8 general welfare.” *Spoklie v. Montana*, 411 F.3d 1051 (9th Cir. 2005); *see also Richardson v.*
9 *City and County of Honolulu*, 124 F.3d 1150, 1162 (9th Cir. 1997). Whether the Ordinance is
10 the only or best approach is irrelevant. Moreover, courts will not act as a “super-legislative”
11 body to question the wisdom of otherwise constitutional acts by the Board. *Autotronic Systems,*
12 *Inc. v. City of Coeur D’Alene*, 527 F.2d 106, 108 (9th Cir. 1975).

13 Plaintiff alleges that the “testimony from County officials recounts multiple
14 interpretations of the [2014 Ordinance] that the County believed were valid, indicating that the
15 [2014 Ordinance] is unconstitutionally void for vagueness.” (Pl.’s MSJ 17:7–8) (emphasis
16 omitted).

17 A statute may violate the Due Process Clause if it is impermissibly vague. *See, e.g.,*
18 *Nevada Rest. Servs., Inc.*, 2012 WL 4355549, at *7. A facial vagueness challenge outside the
19 context of the First Amendment “present[s] a hurdle that is difficult for the [plaintiff] to scale.”
20 *Hotel & Motel Ass’n of Oakland v. City of Oakland*, 344 F.3d 959, 971 (9th Cir. 2003). “[A]
21 party challenging the facial validity of an ordinance on vagueness grounds outside the domain
22 of the First Amendment must demonstrate that ‘the enactment is impermissibly vague in all of
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25 ⁴ Although Plaintiff alleges a police power argument in its Amended Complaint, (*see* Am. Compl. ¶¶ 115–129), it does not assert this argument in its Motion for Summary Judgment, or in its Response to the County’s Motion for Summary Judgment, (ECF No. 82), instead mainly arguing for void for vagueness, (Pl.’s MSJ 17:7–8). As such, the Court construes this as Plaintiff abandoning its police power argument and will not address it here.

1 its applications.” *Id.* (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*,
2 455 U.S. 489 (1982)). A statute can be impermissibly vague for two independent reasons:
3 (1) “it fails to provide persons of ordinary intelligence a reasonable opportunity to understand
4 what conduct it prohibits,” or (2) “it authorizes and encourages arbitrary and discriminatory
5 enforcement.” *Hill v. Colorado*, 530 U.S. 703, 732 (2000).

6 Plaintiff’s primary argument for void for vagueness is the conflicting position the
7 County and Director Holloway took in implementing the 2014 Ordinance. (*See* Pl.’s MSJ
8 17:27–19:8). However, this Court has found—and continues to find—that the County’s
9 interpretation of the 2014 Ordinance “is reasonably consistent with its plain language
10 notwithstanding the revision issued by Director Holloway.” *AJ Sloan, Inc. v. Holloway*, No. 2-
11 15-cv-02436-GMN-VCF, 2017 WL 1042462, at *4 (D. Nev. Mar. 16, 2017); *see Santa Monica*
12 *Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1035 (9th Cir. 2006) (noting that
13 “pertinence” of city manager’s administrative instruction authorized by and construing city
14 ordinance not affected by repeated amendments). As stated in the Prior Order, Director
15 Holloway’s letters do not demonstrate that “persons of ordinary intelligence could not
16 understand what conduct the 2014 Ordinance prohibits, or that the 2014 Ordinance itself
17 authorizes and encourages discriminatory enforcement.” (Prior Order 11:20–22, ECF No. 58).
18 Therefore, even in light of the evidence, the plain language of the 2014 Ordinance is not
19 impermissibly vague, and the Court grants summary judgment for the County on Plaintiff’s
20 substantive due process claims in relation to the 2014 Ordinance.⁵

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23 ⁵ Plaintiff also asserts an argument for substantive due process in alleging that the County has taken “a series of
24 arbitrary and unreasonable actions.” (Pl.’s MSJ 19:24–25). However, in order to be determined an arbitrary
25 deprivation, the infraction must be the level of “abuse of power as that which shocks the conscience” and only
“the most egregious official conduct can be said to be arbitrary in a constitutional sense.” *Brittain v. Hansen*, 451
F.3d 982, 991 (9th Cir. 2006). Moreover, “to establish a substantive due process claim, a plaintiff must show a
government deprivation of life, liberty, or property.” *Id.* Because the Court, as discussed *supra*, neither
recognizes a deprivation of life, liberty, or property, nor finds the County’s actions to shock the conscience, the
Court denies this avenue of argument for substantive due process.

1 **2. Plaintiff's Due Process Claim Concerning the Package Liquor Licenses**

2 In its Amended Complaint, Plaintiff alleges that it applied for package liquor licenses for
3 all of its tavern locations on June 16, 2015. (Am. Compl. ¶ 77). After submitting its
4 application, the County issued one package liquor license, which ultimately was mistakenly
5 issued. (*Id.* ¶ 79). On December 14, 2015, Director Holloway stated to Plaintiff that the County
6 was exercising its discretion not to grant the application. (*Id.* ¶ 80). Plaintiff therefore asserted
7 that, in denying the package liquor license applications, the County violated Plaintiff's
8 procedural due process and seeks a petition for writ of mandamus and judicial review. (Am.
9 Compl. ¶¶ 84–109).

10 However, similar to a gaming license, a liquor license in Nevada is a privilege and not a
11 right. Code § 8.20.030 (“A liquor license is a privilege . . .”). Moreover, the Nevada Supreme
12 Court and a court in this District holds that “due process presumes a protectable property or
13 liberty interest. This court and the majority of others have held that a liquor licensee has no
14 such interest.” *Kochendorfer v. Bd. of Cnty. Comm'rs*, 566 P.2d 1131, 1134 (1977); *see G & G*
15 *Fremont, LLC v. City of Las Vegas*, 202 F. Supp. 3d 1175, 1180–81 (D. Nev. 2016). “There is
16 no inherent right in a citizen to sell intoxicants . . .” *Gragson v. Toco*, 520 P.2d 616, 617
17 (1974). Because Plaintiff has no vested property right in its liquor license, the Court
18 accordingly grants summary judgment for the County on the package liquor licenses due
19 process claim.

20 **3. Petition for Writ of Mandamus**

21 Plaintiff's first cause of action petitions the Court for a writ of mandamus for the
22 County's actions affecting Plaintiff. (Am. Compl. ¶¶ 82–88). Specifically, Plaintiff alleges that
23 the County's “violations of [its] legal duties and arbitrary and capricious actions compel this
24 Court to issue a Writ of Mandamus directing [the County] to reinstate the grandfathered Class
25 A licenses of [Plaintiff's] locations it has indicated will no longer be grandfathered.” (*Id.* ¶ 86).

1 “The Supreme Court and all courts established by Act of Congress may issue all writs
2 necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and
3 principles of law.” *Kerr v. U.S. Dist. Ct. N. Dist. of Cal.*, 426 U.S. 394, 399 (1976) (quoting
4 28 U.S.C. § 1651). Although district courts have “never confined themselves to an arbitrary
5 and technical definition of jurisdiction, it is clear that only exceptional circumstances
6 amounting to a judicial usurpation of power will justify the invocation of this extraordinary
7 remedy.” *Will v. United States*, 389 U.S. 90, 95 (1967). Additionally, District Courts may
8 obtain jurisdiction to issue a writ of mandamus through constitutional or statutory provisions.
9 *Petrowski v. Nutt*, 161 F.2d 938, 938–39 (9th Cir. 1947). Issuance of a writ of mandamus to
10 enforce performance is appropriate only when “there is no other adequate remedy.” *Bd. of*
11 *Comm’rs of Knox Cnty. v. Aspinwall*, 65 U.S. 376, 377 (1860).

12 In Nevada, “[a] municipality’s discretionary regulation of the dispensation of alcoholic
13 beverages within its corporate limits should be respected by the courts absent clear evidence
14 that an act of regulation is arbitrary, capricious, or an abuse of discretion.” *Tighe v. Von*
15 *Goerken*, 833 P.2d 1135, 1136 (1992) (citing Nev. Rev. Stat. § 268.090(1)). Moreover, “a trial
16 court should sustain discretionary action of a governmental body, absent an abuse thereof, to
17 the same extent that an appellate court upholds the discretionary action of a trial court.” *Urban*
18 *Renewal Agency v. Iacometti*, 379 P.2d 466, 468 (1963).

19 Pursuant to the foregoing, Plaintiff fails to demonstrate “exceptional circumstances” to
20 “justify the invocation of this extraordinary remedy.” *See Will*, 389 U.S. at 95. Specifically, the
21 Court finds that the County did not act arbitrarily, capriciously, or abuse its discretion in either
22 enforcing the 2014 Ordinance regulating taverns or denying Plaintiff’s application for package
23 liquor licenses. Moreover, as fully discussed *supra*, the County did not act contrarily to the
24 plain language of the 2014 Ordinance in issuing the October Letter. The Court therefore grants
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1 summary judgment for the County and denies Plaintiff's Petition for Writ of Mandamus in
2 relation to both the 2014 Ordinance and the package liquor licenses.

3 ***4. Judicial Review***

4 Plaintiff's second cause of action asks the Court for judicial review "of the record on
5 which the [County's] non-legislative re-interpretation and attempted enforcement of the [2014]
6 Ordinance" were based on a "determination that the decisions lacked substantial evidence," and
7 a "determination that the actions are unconstitutional deprivations of [Plaintiff's] protected
8 property interests under the United States Constitution and all applicable law." (Am. Compl.
9 ¶ 92). The Code allows judicial review in two situations. First, § 20.12.120 states in relevant
10 part that "[a]ny person aggrieved, or taxpayer affected, by any decisions of the Clark County
11 planning commission, or the board of Clark County commissioners, may appeal to the courts of
12 Nevada." Code § 20.12.120. Second, § 8.08.160 states in relevant part that "[e]xclusive power
13 to regulate the businesses of gaming, dancehalls, escort services and liquor sales are vested by
14 the Nevada Legislature in the liquor and gaming licensing board. . . . Any person aggrieved by
15 final decision or order of the board made after hearing may obtain a judicial review of
16 questions of law thereof in the Eighth Judicial District Court." Code § 8.08.160.

17 As stated in the Prior Order, neither of these situations apply here. Plaintiff is not
18 challenging the decisions of the Clark County planning commission or the board of Clark
19 County commissioners; Plaintiff is only challenging Director Holloway's interpretations of the
20 2014 Ordinance based on the letters. (Am. Compl. ¶¶ 91–93). Similarly, Plaintiff is not
21 challenging a licensing procedure to imply § 8.08.160. Even premising Plaintiff's request for
22 judicial review on the confusion caused by Director Holloway's letters, Plaintiff's cause of
23 action for judicial review continues to appear redundant with the actual action itself. The Court
24 therefore grants summary judgment for the County on this claim in relation to both the 2014
25 Ordinance and the package liquor licenses.

1 **5. Section 1983**

2 Plaintiff's fifth cause of action alleges violations of 42 U.S.C § 1983 due to the County's
3 conduct allegedly depriving Plaintiff of its "rights, privileges, and immunities secured by the
4 Constitution." (Am. Compl. ¶¶ 140). A claim under § 1983 requires that: (1) the conduct that
5 harms a plaintiff is committed under color of state law, and (2) that conduct deprives a plaintiff
6 of a constitutional right. *Ketchum v. Country of Alameda*, 811 F. 2d 1243, 1245 (9th Cir. 1987).

7 As discussed *supra*, there is no constitutional right at stake in this case, therefore barring
8 Plaintiff's ability to successfully plead a § 1983 violation. As a result, the Court grants
9 summary judgment for the County on Plaintiff's § 1983 claim.

10 **IV. CONCLUSION**

11 **IT IS HEREBY ORDERED** that the County's Motion for Summary Judgment, (ECF
12 No. 67), is **GRANTED**.

13 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Writ of Mandamus, (ECF No.
14 62), is **DENIED**.

15 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment, (ECF
16 No. 74), is **DENIED**.

17 **IT IS FURTHER ORDERED** that the County's Motion in Limine, (ECF No. 81), is
18 **DENIED as moot**.

19 **IT IS FURTHER ORDERED** that the County's Motion for Leave to File Reply, (ECF
20 No. 89), is **DENIED as moot**.

21 **IT IS FURTHER ORDERED** that Plaintiff's Motion for District Judge to Reconsider
22 Order, (ECF No. 91), is **DENIED as moot**.

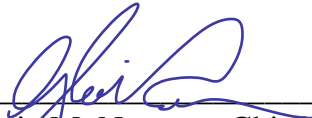
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1 **IT IS FURTHER ORDERED** that the Plaintiff's Motion for Leave to File Reply, (ECF
2 No. 93), is **DENIED as moot**.

3 The Clerk of the Court shall enter judgment accordingly and close the case.

4 **DATED** this 26 day of February, 2018.

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9 Gloria M. Navarro, Chief Judge
10 United States District Judge
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